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VIA ECF

The Honorable John G. Koeltl
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Mashinsky*, 23 Cr. 347 (JGK)

Dear Judge Koeltl:

Defendant Alexander Mashinsky respectfully submits this Opposition to the Government's Proposed Examination of Prospective Jurors (ECF No. 75) ("government's proposed *voir dire*").

The Supreme Court has recognized that the *voir dire* process "plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored." *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981) (plurality opinion). That is because an inadequate *voir dire* compromises the trial court's "responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence." *Id.* Therefore, it is uncontroversial that "part of the guarantee of a defendant's right to an impartial jury is an adequate *voir dire* to identify unqualified jurors." *Morgan v. Illinois*, 504 U.S. 719, 729 (1992).

The *voir dire* in this case is particularly important because the defendant carries a significant public profile. The attention focused on Mr. Mashinsky, his background and his work in the crypto market has been pervasive. His name has spread far and wide on social media, traditional media, YouTube, and countless other platforms, often with very negative connotations. A routine Google search of the name "Alex Mashinsky," on or about November 7, 2024, yielded DOJ and SEC press releases, stories in *The New York Times*, Reuters, *The Financial Times*, CNN, CBS, CNBC and the Times of Israel among myriad other places. The same search reveals YouTube videos including the following titles: *Alex Mashinsky F*cks Crypto Users One More Time* (approx. 70,000 views); *When Conmen Get What They Deserve* (approx. 48,000 views); *The Man Who Destroyed Billions* (approximately 104,000 views); and *Alex Mashinsky Finally Arrested* (approximately 26,000 views). Among the podcasts that mention Mr.

The Hon. John G. Koeltl

November 8, 2024

Page 2

Mashinsky are the *Fraudsters* podcast, season 3, episodes 89 and 90 devoted to Alex Mashinsky and Celsius; *Crypto Critics Corner: A Tale of Two Ponzis: Celsius and Luna, Alex Mashinsky and Do Kwon*, September 30, 2022, Season Two, Episode 54, and numerous others covering Mr. Mashinsky's arrest. And that is just the tip of the iceberg.

The defense respectfully submits that its Proposed Voir Dire questions (ECF No. 78) will properly uncover potential juror views about Mr. Mashinsky and should be adopted by the Court. In particular, **proposed questions 8 and 15** of the defense's Proposed Voir Dire, which are not addressed adequately by the government's proposed voir dire (ECF No. 75), should be included in the Court's questions.

Proposed question 8 informs the panel that certain events in the case took place in Israel and certain evidence in the case was translated from Hebrew. In the wake of the October 7, 2023 attacks, events in Israel are a hot-button topic in the mainstream news, social media, and on New York's college campuses and graduate schools. See e.g., *Thousands of anti-Israel protesters blanket NYC on first anniversary of Oct. 7 terror attack*, <https://nypost.com/2024/10/07/us-news/protests-blanket-nyc-on-first-anniversary-of-oct-7-terror-attack/>; *200 arrested at pro-Palestinian Wall Street protest against Israel's attacks*, <https://www.nbcnewyork.com/news/local/wall-street-israel-protest-nyse/5886600/>; *Oct. 7 attack: Pro-Palestinian protesters march throughout NYC's Lower Manhattan one year later*, <https://abc7ny.com/post/oct-7-attack-pro-palestinian-protests-college-walkouts-expected-nyc-year-later/15400675/>; *Anti-Israel student and teacher protesters at NYC universities plan campus walkouts on Oct. 7 anniversary*, <https://nypost.com/2024/10/06/us-news/anti-israel-student-and-teacher-protesters-at-nyc-universities-plan-campus-walkouts-on-oct-7-anniversary/>. It will be critical to know whether these current events would affect a potential juror's view of the evidence or ability to be fair.

This issue cannot be ignored. The Second Circuit has noted that a *voir dire* "falls short" when there is "a failure to inquire about . . . a systematic or pervasive bias, including one that may be short-lived but existent at the time of trial, in the community that would have been cured by asking a question posed by a party." *United States v. Nieves*, 58 F.4th 623, 633 (2d Cir. 2023). Proposed Question 8 would cover these concerns.¹

Question 15 addresses Sam Bankman-Fried's bankrupt cryptocurrency platform, FTX. There will undoubtedly be testimony about FTX in this matter as a platform where certain trades of CEL token took place. This inquiry is critical because the FTX platform is toxic in the

¹ The Second Circuit's unreported decision in *United States v. Mendlowitz*, No. 21-2049, 2023 WL 2317172 (2d Cir. Mar. 2, 2023) does not stand in the way of the requested inquiry. In *Mendlowitz*, a Jewish defendant who wore a yarmulke in the courtroom requested *voir dire* questions concerning the panel's views towards Jewish people in financial cases. *Id.* at 1. The trial court declined to ask the defense's proposed questions, but instead asked whether there was anything about the "physical appearance" of the defendant that would hinder anybody's ability to be impartial. *Id.* The Court of Appeals held that because the trial judge's substitute question "aimed to achieve the same purpose of probing any potential bias" there was no error. *Id.* at *2. The trial judge's question "had the desired effect" – it elicited at least one answer by a panelist who was dismissed for cause. *Id.*

The Hon. John G. Koeltl

November 8, 2024

Page 3

cryptocurrency world, the finance industry, and in mainstream culture as well. *See e.g., My FTX crypto horror story*, <https://global-geneva.com/my-ftx-crypto-disaster-story/>; *A framework for fraud: How FTX was a scam from the very beginning*, <https://www.marketwatch.com/story/a-framework-for-fraud-how-ftx-was-a-scam-from-the-very-beginning-11671029303>; *Why FTX's collapse conjures nightmares from 2008*, <https://www.theglobeandmail.com/business/article-ftx-crypto-crash-financial-contagion-2008/>; *Sam Bankman-Fried convicted of multi-billion dollar FTX fraud*, <https://www.reuters.com/legal/ftx-founder-sam-bankman-fried-thought-rules-did-not-apply-him-prosecutor-says-2023-11-02/>; Natalie Brunel: *FTX is a crypto criminal enterprise*, <https://www.foxnews.com/video/6316027918112>.

This is particularly acute because FTX and its executives have been in the news throughout 2024. Several executives have recently been sentenced in cases covered by the mainstream media. *See e.g., FTX cleared to repay billions to customers after bankruptcy plan approval*, <https://www.reuters.com/legal/crypto-exchange-ftxs-liquidation-plan-receives-court-approval-2024-10-07/>; *Sam Bankman-Fried Sentenced to 25 Years in Prison*, <https://www.nytimes.com/2024/03/28/technology/sam-bankman-fried-sentenced.html>; *Former FTX executive Ryan Salame begins his seven and a half year prison sentence*, <https://www.theblock.co/post/320749/former-ftx-executive-ryan-salame-begins-his-seven-and-a-half-year-prison-sentence>; *Caroline Ellison, Sam Bankman-Fried's ex-lover, starts prison sentence*, <https://nypost.com/2024/11/07/business/caroline-ellison-sam-bankman-frieds-ex-starts-prison-sentence/>.

It will be critical to know whether prospective jurors are familiar with FTX, in what context and whether that would impair their ability to listen to evidence in this case.

Respectfully submitted,

/s/ Marc L. Mukasey
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Torrey K. Young
Michael Westfal

Counsel for Alexander Mashinsky

cc: All counsel of record (via ECF)